

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

Freddie Garland, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Orlans PC, Linda Orlans, and Alison
Orlans,

Defendants.

Case No. 2:18-cv-11561-DPH-RSW

Honorable Denise Page Hood
Magistrate Judge R. Steven Whalen

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Attorneys for Defendants

Attorneys for Plaintiff

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION (ECF #46) SEEKING LEAVE TO FILE A BRIEF IN RESPONSE TO DEFENDANTS' CITATION OF NEW SIXTH CIRCUIT AUTHORITY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS UNDER RULES 12(b)(1) AND 12(b)(6) (ECF #45) and BRIEF IN SUPPORT

Defendants, by their attorneys, Honigman LLP, for their response to Plaintiff's Motion (ECF #46) Seeking Leave to File a Brief in Response to Defendants' Citation of New Sixth Circuit Authority in Support of Defendants' Motion to Dismiss Under Rules 12(B)(1) And 12(B)(6) (ECF #45), say:

1. On January 3, 2020, the United States Court of Appeals for the Sixth Circuit issued (and recommended for full-text publication) its Opinion in *Buchholz v. Meyer Njus Tanick, PA*, CA No. 18-2261 (6th Cir. Jan. 3, 2020) (the "*Buchholz* Opinion"). In the *Buchholz* Opinion, the Sixth Circuit affirmed the Western District court's decision in *Buchholz v. Meyer Njus Tanick, PA*, case no. 1:18-cv-607 (W.D. Mich. Sept. 27, 2018), a case that Defendants previously submitted to this Court as supplemental authority. (*See* ECF No. 23).

2. On January 10, 2020, Defendants advised the Court of the *Buchholz* Opinion and explained its significance to this action in Defendants' Citation of New Sixth Circuit Authority in Support of Defendants' Motion to Dismiss Under Rules 12(b)(1) and 12(b)(6). (*See* ECF #45.)

3. On January 16, 2020, Plaintiff filed the instant motion ("Plaintiff's Motion").

4. While Defendants disagree with the reasons proffered by Plaintiff for seeking leave to file a 15-page response brief, they have no objection to Plaintiff filing a response brief of up to 15 pages, as long as Defendants are permitted to file

a 7-page reply. This will give Defendants a total of 13 pages (when combined with the six pages in Defendants' Citation of New Sixth Circuit Authority) as compared to Plaintiff's 15 pages. Fundamental fairness dictates that Defendants be permitted to reply to Plaintiff's forthcoming response, particularly since he accuses Defendants of yet-to-be-identified "errors, incorrect arguments, and omissions" in Defendants' Citation of New Sixth Circuit Authority. (Pl.'s Mot. at 1.)

5. Defendants do object to the alternative relief that Plaintiff seeks – striking Defendants' Citation of New Sixth Circuit Authority. The *Buchholz* Opinion is controlling and dispositive new authority, and Defendants properly brought the *Buchholz* Opinion to the Court's attention in Defendants' Citation of New Sixth Circuit Authority.

WHEREFORE, Defendants respectfully request that (1) the Court deny Plaintiff's request to strike Defendants' Citation of New Sixth Circuit Authority, and (2) if the Court permits Plaintiff to file a response to Defendants' Citation of New Sixth Circuit Authority, that Defendants be permitted to file a 7-page reply within 14 days after receipt of Plaintiff's response.

January 17, 2020

Respectfully submitted,

Honigman LLP
Attorneys for Defendants

By: /s/ Bruce L. Segal
I. W. Winsten (P30528)
Bruce L. Segal (P36703)

CERTIFICATE OF SERVICE

I certify that on January 17, 2020, I electronically filed the preceding paper with the Clerk of the Court using the ECF system, which will send notification of the filing to all ECF participants, and I certify that I have mailed the preceding paper by United States Postal Service to the following non-ECF participants: None.

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Attorneys for Defendants

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